

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	
)	Case No. 17-17361- (AIH)
Richard M. Osborne)	
)	Chapter 11
)	
Debtor)	Judge Arthur I. Harris

**Objection to the Motion of Richard M. Osborne, Sr., Debtor in Possession, to Employ
John K. Lane and the Firm Inglewood and Associates as Valuation Expert**

Daniel M. McDermott, United States Trustee for Region 9, pursuant to his administrative responsibilities, has reviewed the *Motion of Richard M. Osborne, Sr., Debtor in Possession, to Employ John K. Lane and the Firm Inglewood and Associates as Valuation Expert* (“Motion”) and has some concerns regarding terms contained in the attached engagement letter. In support of this Objection, the United States submits the following:

Jurisdiction

1. This Court has jurisdiction to hear the above-captioned Motion.
2. Pursuant to 28 U.S.C. §586, the United States Trustee is charged with the supervision and administration of all cases commenced under Chapter 11, Title 11, United States Code. This duty is part of the United States Trustee’s overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that United States Trustee has “public interest standing” under 11 U.S.C. §307, which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*,

898 F.2d 498, 500 (6th Cir. 1990). Pursuant to 11 U.S.C. §307, the United States Trustee has standing to be heard on any issue pending before this Court.

Statement of Facts

3. On December 17, 2017, Richard M. Osborne (“Debtor”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code. To date, the Debtor remains a Debtor-in-Possession and has control of his assets. To date, Debtor has not filed a disclosure statement or plan or reorganization.

4. On July 3, 2019, this Honorable Court is conducting an evidentiary hearing on the both the United States Trustee’s motion to convert this case to Chapter 7 (Docket No. 439) and First National Bank of Pennsylvania’s motion to appoint a chapter 11 trustee (Docket No.308)

5. On June 11, 2019, Debtor filed the Motion requesting authority to employ John K. Lane and the Firm of Inglewood and Associates to perform certain duties including performing valuation services. Attached to the Motion is a letter dated May 14, 2019 between Inglewood and Mr. Osborne. The letter is not signed. One of the terms contained in the letter is a Limitation of Liability section which seeks to limit Inglewood’s entire liability to amount of fees actually paid. The United States Trustee objects to this provision. Once a professional represents a debtor under section 327 of the Bankruptcy Code, the professional has a fiduciary obligation to the bankruptcy estate and their service requires a highest degree of skill and care, based upon their special learning and advanced knowledge. See *In re Gillett Holdings, Inc.*, 137 B.R. 452, 458 (Bankr. D. Colo. 1991); see also *In re Allegheny Int’s, Inc.*, 100 B.R. 244, 246 (Bankr. W.D. Pa. 1989).

6. The Limitation of Liability Provision is inappropriate and inconsistent with the

obligations and duties of an estate professional and contrary to standard practice in other jurisdictions. See *In re United Cos. Fin. Corp.*, 241 B. R. 521 (Bankr. D. Del. 1999); see also *In re Dailey International, Inc.*, No. 99-1233, 1999 WL 35140013 (Bankr. D. Del. July 1, 1999);

WHEREFORE, the United States Trustee respectfully requests the Court consider the above objection and enter an Order consistent with this Objection and for such other relief as this Court deems appropriate.

Respectfully submitted,

DANIEL M. MCDERMOTT
United States Trustee, Region 9

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Certificate of Service

I certify that on June 25, 2019, a true and correct copy of *Motion of the United States Trustee to Convert Case to Chapter 7* was served: Via the Court's Electronic Case Filing System on these entities and individuals who are listed on the Court's Electronic Mail Notice List:

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